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July 10, 1997

**VIA HAND-DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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JUL 10 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY


Re: **RM-9101**

Dear Mr. Caton:

On behalf of WinStar Communications, Inc., enclosed are an original and four copies of its Comments in RM-9101. Also enclosed is an extra copy of the Comments. Please date stamp the extra copy and return it to the undersigned in the self-addressed, stamped envelope provided.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,



Morton J. Posner

Enclosures

cc: Janice M. Myles (2 copies & diskette)  
ITS (1 copy & diskette)  
Robert G. Berger, Esq. (w/encl.)  
Russell M. Blau, Esq. (w/encl.)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition for Expedited Rulemaking )  
To Establish Reporting Requirements and ) RM 9101  
Performance and Technical Standards for )  
Operations Support Systems )  
\_\_\_\_\_ )

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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Dated: July 10, 1997

Counsel for WinStar Communications, Inc.

## SUMMARY

As described in the Petition, there is widespread incumbent local exchange carrier ("ILEC") failure to provide access to adequate Operations Support Service ("OSS") to competitive local exchange carriers ("CLECs"). WinStar Communications, Inc. ("WinStar") concurs with the Petitioners that Commission action is necessary to ensure nondiscriminatory OSS access. The Commission immediately should order ILECs to disclose their internal performance standards for OSS functions and it should commence a rulemaking proceeding to set minimum performance standards for those functions with penalties for failure to meet those standards. In addition, the Commission should compel ILECs to transition to a standardized, uniform national OSS (just as is done, by analogy, with respect to electronic data interchange). A carrier such as WinStar which is attempting to deploy competitive local exchange service nationwide is faced with the prospect of developing multiple separate processes to interact with inconsistent ILEC operations support. This lack of standardization has delayed WinStar's ability to enter some markets, hampered its ability to turn up and bill its customers, and resulted in loss of goodwill. Without uniform nationwide OSS standards, CLECs will be unable to compete effectively for the local exchange market.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Expedited Rulemaking	)	
To Establish Reporting Requirements and	)	RM 9101
Performance and Technical Standards for	)	
Operations Support Systems	)	
_____	)	

**COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

WinStar Communications, Inc. ("WinStar"), by counsel, hereby files its Comments in support of the captioned LCI International Telecom Corp. and Competitive Telecommunications Association Petition for Expedited Rulemaking requesting the Commission to establish minimum performance standards and other requirements for competitive local exchange carrier ("CLEC") nondiscriminatory access to incumbent local exchange carrier ("ILEC") operations support service ("OSS").

WinStar is a publicly-held company (traded on the NASDAQ) which, among other things, develops, markets, and delivers local telecommunications services in the United States.<sup>1/</sup> The Company, through its operating affiliates, provides facilities-based local telecommunications

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<sup>1/</sup> WinStar is authorized to provide facilities-based telecommunications service in the 43 largest metropolitan statistical areas. WinStar's operating companies have been approved to offer competitive local exchange carrier services in 24 jurisdictions, and applications for such authority are pending in several other jurisdictions. In addition, WinStar's affiliates are authorized to operate as competitive access providers in 34 jurisdictions, and have applications pending in several other jurisdictions. A separate WinStar subsidiary provides switched and switchless long distance services on a resale basis. WinStar has initiated switched local exchange service on a facilities basis in New York, Chicago, Boston, Los Angeles, San Diego, and currently is in the process of completing switch installation in several additional jurisdictions, including, for example, Dallas and the District of Columbia.

services on a point-to-point basis principally using wireless, digital millimeter wave capacity in the 38 gigahertz (GHz) band, a configuration referred to by WinStar as Wireless Fiber<sup>SM</sup>.<sup>2/</sup>

## I. INTRODUCTION

Although the Telecommunications Act of 1996 ("1996 Act") is nearly a year-and-a-half old, new entrants have yet to carve out a significant share of the nation's local exchange market. One of the many reasons for the inability of local competition rapidly to take root in the last 17 months is that it takes more than an interconnection agreement with an ILEC to compete in the local exchange market. Among other things, new entrants like WinStar have an essential need for access to timely, accurate, effective, and nationally uniform OSS to make customer orders, provision service, write trouble tickets, and bill customers. To date, ILECs have not and cannot provide these basic functions — necessary for any telephone company — to CLECs. New entrants like WinStar are starting from scratch in markets already served by some ILECs for up to 100 years. CLECs' virtually absolute dependence on unsatisfactory ILEC operations support only serves to widen the competitive disparity between incumbents and new entrants.

As the Commission acknowledged in its *Local Competition Order*, OSS functions are subject to the nondiscriminatory access duty imposed under Sections 251(c)(3) & (c)(4) of the 1996 Act.<sup>3/</sup> This requirement means that competing carriers must be able "to perform the functions of pre-

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<sup>2/</sup> WinStar's Wireless Fiber<sup>SM</sup> networks are so named because of their ability to duplicate the technical characteristics of fiber optic cable with wireless 38 GHz microwave transmissions.

<sup>3/</sup> *First Report and Order*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 517 (1996) ("*Local Competition Order*"), *partial stay granted on other grounds pending review sub nom. Iowa Utils. Bd. v. FCC*, 109 F.3d 418 (8th Cir. 1996).

ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself.”<sup>4/</sup> Further, ILEC compliance mandates “equivalent access to OSS functions that an incumbent uses for its own internal purposes or offers to its customers or other carriers.”<sup>5/</sup>

Despite the Commission’s clear guidance, and its January 1, 1997 deadline for ILEC provision of nondiscriminatory OSS access, there is widespread ILEC failure to provide adequate OSS access to CLECs. WinStar concurs with the Petitioners that immediate Commission action is essential to ensure nondiscriminatory OSS access. Of particular concern to WinStar is the fact that each ILEC’s OSS functions are not standardized. A carrier such as WinStar which is attempting to deploy competitive local exchange service nationwide is faced with the prospect of developing multiple separate processes to interact with ILEC operations support. This lack of standardization has delayed WinStar’s ability to enter markets and, in some cases, already has meant lost revenues directly because of delays occasioned by lack of nondiscriminatory OSS access.

First, the Commission should order ILECs to disclose immediately their internal performance standards for OSS so that the Commission and the CLEC industry can scrutinize ILEC provision of those functions, and thereby have an appropriate proxy against which to measure ILEC provisioning of OSS.

Second, the Commission also should commence a rulemaking proceeding to set minimum uniform performance standards for those functions, with penalties for failure to meet those standards.

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<sup>4/</sup> *Id.*, ¶ 518.

<sup>5/</sup> *Second Order on Reconsideration*, CC Docket No. 96-98, ¶ 9 (released Dec. 13, 1996)

Third, the Commission should compel ILECs to transition to more standardized OSS so that local competition can finally begin to truly develop nationwide.

## **II. WINSTAR HAS EXPERIENCED DIFFICULTIES IN OBTAINING NON-DISCRIMINATORY AND ACCURATE OSS**

WinStar has sought to use the OSS of five of the seven Regional Bell Operating Companies ("RBOCs"). On balance, WinStar's experience is that the RBOCs are unable to provide nondiscriminatory OSS access, or even accurate OSS transactions. Principally due to the inability of most RBOCs to provide uniform, easily used electronic OSS, the majority of WinStar's OSS transactions are completed by fax. It is inconceivable that the ILECs themselves require manual intervention in dealing with their own customers. Nevertheless, elements of manual intervention are necessary in nearly all ILEC OSS transactions. Described below are some of WinStar's experiences with ILEC operations support.

### **A. Preordering**

Due to ILEC failures to provide preordering functions in real time, WinStar has lost revenue and goodwill in serving customers. Ideally, preordering transactions should be automated. NYNEX and Bell Atlantic are the only RBOCs with which WinStar currently is able to complete preordering functions on an electronic basis. Pacific Bell utterly has failed to provide an electronic preordering process. To turn up a customer, WinStar must send Pacific Bell a fax requesting a Customer Service Record ("CSR") before WinStar may accurately effectuate a customer's order.<sup>6/</sup> The time between WinStar's initiation of the order to Pacific Bell's return of the CSR varies between two days **and five weeks**. Obviously, Pacific Bell need not wait such a length of time before it has the CSR

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<sup>6/</sup> LCI's experience is similar. See Petition at 49.

enabling it to fill a customer's order. Yet Pacific Bell's delays translate directly to lost WinStar revenues due to Pacific Bell's failure to observe reasonable minimum intervals in providing preordering information and its failure to offer automated access to information that Pacific Bell itself may access virtually instantly.

#### **B. Ordering and Provisioning**

Real RBOC ordering intervals often bear no resemblance to stated intervals, resulting in intolerable delays before WinStar can begin serving customers. For example, Pacific Bell's CLEC Handbook promises that "as is" orders can be filled in three days after the preordering process.<sup>7/</sup> At the end of April, Pacific Bell was filling "as is" orders in 11 days, and now fills such orders in approximately six days.

Similarly, to clear an ordering backlog in the Ameritech region this spring, Ameritech sent several hundred WinStar orders back as allegedly containing errors. Few, if any substantive WinStar errors were involved.<sup>8/</sup> WinStar lost time in serving its customers and had to devote additional staff time to these orders.

In BellSouth territory, provisioning intervals for resale orders have dramatically increased in the last several months from one-to-two days to 15-20 days for a simple order and up to 45 days for complex orders. BellSouth also takes up to three-to-four days to notify WinStar that they have completed a customer conversion to WinStar service. BellSouth has indicated that its CLEC service

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<sup>7/</sup> "As is" orders are those orders in which an ILEC customer's service is converted "as is," with all features and functions, to a CLEC.

<sup>8/</sup> AT&T similarly has experienced high rejection rates with its Ameritech orders. *See* Petition at 38-39.



bureau simply cannot handle the overall volume of resale orders it receives. The result is, however, that CLEC provisioning intervals are severely deficient.

### **C. Maintenance and Repair**

Trouble reporting to ILECs presents a particular problem for WinStar's nationwide local exchange network. Unlike ILECs, WinStar must make trouble reports to every ILEC, necessitating as many as eight different WinStar procedures for all the RBOCs and GTE. Without automated systems to verify the status of customer lines and to write trouble tickets, WinStar loses valuable time and goodwill in seeking to correct service problems. This holds true whether WinStar provides local exchange service on a facilities basis or on a resale basis.

### **D. Billing**

As a new entrant to the nation's local exchange markets, WinStar consistently has experienced difficulties in receiving customer usage records in accurate, usable, and standard formats.<sup>2/</sup> When ILEC bills are inaccurate, late, or not in a usable format, WinStar must devote extra staff time to billing functions. As a result, WinStar has lost significant revenue and customer goodwill due to discriminatory ILEC billing functions. Moreover, the complexity of handling billing data which varies by ILEC has delayed WinStar's ability to initiate competitive local exchange service.

Similar to LCI, *see* Petition at 36-37, WinStar has experienced particular billing problems with Ameritech. Ameritech regularly produces usage records either unacceptably late or not at all. Daily billing usage records often do not arrive daily. In Wisconsin, Ameritech lost all of WinStar's

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<sup>2/</sup> Although there are industry standard billing formats, such as EMR, the billing records for CLASS features often vary greatly from ILEC-to-ILEC.

customer billing records for approximately one-and-a-half-to-two months. In April, WinStar reported to Ameritech that its bill did not include any usage data for 36 WinStar Illinois Billing Telephone Numbers ("BTNs"), but did include usage data for five non-WinStar BTNs. Ameritech initially did not respond to WinStar's inquiry for one month. WinStar was unable to bill its customers during the time it took to investigate and rectify the billing errors.

Ameritech's usage data also does not arrive in a usable format. Ameritech provides call detail records on magnetic tape only, not on paper. Because WinStar is new to the local exchange market, it does not yet have in place billing systems as sophisticated as those Ameritech has developed over many years. Consequently, the tapes Ameritech provides must be outsourced so that the raw billing data can be read and customer bills prepared. WinStar loses a month every time it must send the tapes out, when paper call detail records from Ameritech would be more useful. Unfortunately, if there are errors in the call detail records, additional time is lost to investigation and auditing. WinStar's current experience with Ameritech is that daily and monthly billing information do not always correspond to one another.

A recent BellSouth billing problem further illustrates one of the reasons lack of standardized billing information hampers WinStar's ability to collect charges due from its customers while losing valuable time. BellSouth routinely sends WinStar "rated" billing data, rather than "rated" and "unrated" billing data. WinStar needs "unrated" call records when calls originate on its network so that WinStar can identify those calls and apply its own tariffed rates. By contrast, some BellSouth calls do need to be rated, such as collect calls initiated by BellSouth customers to WinStar customers which are charged at BellSouth's tariffed rates. When these types of billing information are mixed,

WinStar must expend additional staff time to audit the bills to determine which calls need to be re-rated and which calls do not.

WinStar also is experiencing difficulties with Customer Access Record Exchange ("CARE") transactions with BellSouth and Bell Atlantic. Specifically, these RBOCs are processing CARE transactions for resold lines to reflect that WinStar is the line's user of record instead of WinStar's retail customer. As a result, WinStar's billing name and address are provided as the account's billing destination. When a WinStar customer's interexchange carrier is any carrier other than WinStar's interexchange subsidiary, WinStar is billed directly for its customers' long distance calls. WinStar currently is overwhelmed by its customers' retail long distance bills sent directly to WinStar by interexchange carriers. WinStar must manually process these customer bills individually, which is not only onerous but inserts WinStar into a customer-carrier relationship where it ordinarily would have no role.

### **III. COMMISSION ACTION IS NECESSARY DUE TO THE ILECS' FAILURE TO OFFER NONDISCRIMINATORY OSS ACCESS**

There can be no doubt that the ILECs are treating their competitors differently than they are treating themselves with respect to OSS, in plain violation of the 1996 Act itself as well as the Commission's *Local Competition Order*. Before any remedial action may be taken, it is critical that the Commission and the CLEC industry review ILEC internal OSS performance standards as Petitioner propose. See Petition at 23-25. ILECs cannot even pretend to offer CLECs nondiscriminatory OSS access at parity with that access they provide to themselves until ILECs disclose what performance levels they actually achieve. Once this internal data can be analyzed, the Commission should immediately conduct a rulemaking proceeding to set minimum performance

standards for OSS functions. Commission rules relating to OSS performance should have liquidated damages provisions which serve as an incentive for ILECs to observe minimum performance levels. ILECs should not be able to evade these penalties by returning CLEC orders with alleged "errors," as Ameritech has done with WinStar orders in the past.

#### **IV. THE COMMISSION SHOULD BEGIN A TRANSITION TO STANDARDIZED OSS FUNCTIONS**

In the *Local Competition Order*, the Commission pledged to "monitor closely the progress of industry organizations as they implement" nondiscriminatory OSS access and to determine at a later date whether or not to issue a notice of proposed rulemaking or to take other action to guide industry efforts at arriving at national OSS standards.<sup>10/</sup> Most recently in its *Second Order on Reconsideration* the same docket, the Commission declined to delay the January 1, 1997 deadline for nondiscriminatory OSS access until national standards have been developed, but encouraged standardization efforts.<sup>11/</sup> It is evident, however, that the ILEC duty to provide nondiscriminatory OSS access is not being met despite industry efforts.<sup>12/</sup>

WinStar heartily supports LCI's call for national standards for access to OSS functions. See Petition at 21-23. As a new entrant inaugurating local exchange service on a nationwide basis, standardization of OSS is important to WinStar's viability. Unlike the RBOCs themselves, WinStar interconnects with every RBOC and must devote significant resources to supporting individual ILEC operations support functions. Obviously, the significant time, expense, and additional staff WinStar

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<sup>10/</sup> *Local Competition Order*, ¶ 528.

<sup>11/</sup> *Second Order on Reconsideration*, ¶ 13.

<sup>12/</sup> See Petition at 22 (describing industry efforts to set national OSS standards).

expends on these tasks directly affects its competitiveness. By contrast, RBOCs are able to enjoy economies of scale and scope by using single OSS processes within multiple states in their service area. These RBOC economies, coupled with their entrenched customer bases, perpetuate the RBOC stranglehold on the local exchange market.

Given CLECs' experience with deficient ILEC operations support functions, Commission action is needed to require joint planning and national standardization of OSS by carriers. The Commission is well within its prerogative to order such coordination. Sections 251(c)(3) & (c)(4) of the 1996 Act require nondiscriminatory OSS access and industry coordination is the logical means to achieve this congressional mandate.<sup>13/</sup> The Commission's authority to order industry coordination in general, and for interconnection in particular, is well-established.<sup>14/</sup>

The purpose of the regulations requested in the Petition is remedial: to facilitate the determination of when the ILECs are discriminating in the provision of OSS services, and to remedy the pattern of discrimination described in the Petition and confirmed by the experience of WinStar. Congress has mandated the achievement of local exchange competition within a tight time frame and ordered the incumbent local exchange carriers to open their networks to competitive carriers. The

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<sup>13/</sup> See *Notice of Proposed Rulemaking*, MFS and WATS Market Structure, CC Docket No. 78-72, Phase III, 94 F.C.C. 2d 292, 315 (1983) ("Joint planning for interconnection arrangements can be viewed as an appropriate means for enabling carriers to comply with" duties under the Communications Act).

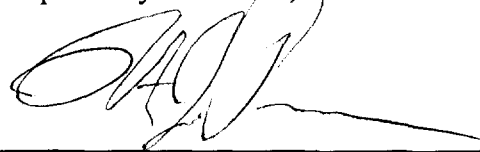
<sup>14/</sup> *Report and Order*, MFS and WATS Market Structure, CC Docket No. 78-72, Phase III, 100 F.C.C. 2d 860, 881 (1985) (joint planning "for ensuring the just and reasonable administration of interconnection arrangements is well within [the Commission's] authority to regulate"); *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking*, MFS and WATS Market Structure, CC Docket No. 78-72, 81 F.C.C. 2d 177, 207 (under Section 201(a), Commission can compel local exchange carriers "to acquire facilities and to adopt design criteria that will make interconnection effective").

Petition asks this Commission merely to remedy discriminatory practices by the ILECs in their implementation of the congressional command. The Commission's authority to take this step cannot reasonably be questioned.

## **V. CONCLUSION**

As the Petition details, CLECs are not receiving satisfactory OSS access. The Commission should order ILECs to disclose immediately their internal performance standards so that the Commission and the CLEC industry can quantify ILEC deficiencies in providing OSS access with that level of performance the ILECs provide to themselves. The Commission also should commence a rulemaking proceeding to set minimum OSS performance standards with liquidated damages for failure to meet those standards. Finally, the Commission should compel carriers to cooperate to establish national OSS standards and to adhere to them. For all the above reasons, WinStar respectfully requests that the Petition for Expedited Rulemaking be granted.

Respectfully submitted,



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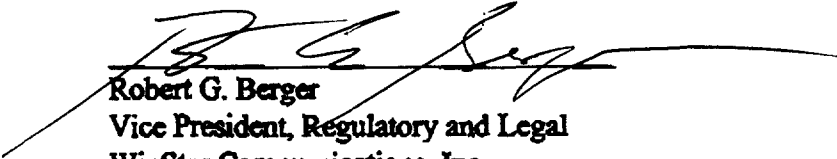
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Counsel for WinStar Communications, Inc.

Dated: July 10, 1997

## DECLARATION

I, Robert G. Berger, declare under penalty of perjury that I have read the foregoing Comments of WinStar Communications, Inc. in support of the Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems, RM 9101, and that the facts contained therein are true and correct to the best of my knowledge. I certify that I am authorized to make this declaration on behalf of WinStar Communications, Inc.

  
Robert G. Berger  
Vice President, Regulatory and Legal  
WinStar Communications, Inc.  
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Date